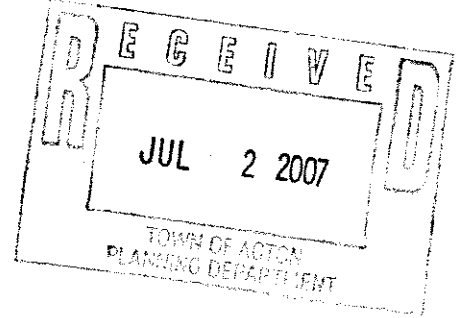


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June 29, 2007

## By Email and Mail

Planning Board  
Town of Acton  
472 Main Street  
Acton, Massachusetts 01720

Catherine Fochtman  
Recreation Director  
Town of Acton  
472 Main Street  
Acton, Massachusetts 01720

(Elm Street Ballfield – proposed lighting)

Dear Members of the Planning Board and Ms. Fochtman:

At the request of the Town Manager's office, this letter provides our opinions regarding (a) the impact of the prior litigation on the special permit proceedings regarding the proposed installation of new sports lighting at the Elm Street ballfield ("Field") and (b) whether the proposed light towers must comply with otherwise applicable front, side and rear yard setbacks.

In brief, the proposed new sports lighting does not violate any order in the litigation. The Planning Board is under no obligation to approve the application, but if it does so, the proposal may actually advance the goals of the latest Agreement for Judgment. The Town should continue discussions with the plaintiffs in the lawsuit (or their attorneys, if they are represented) in an effort to reach agreement on the lighting. Pursuant to Section 5.3.1 of the Acton Bylaw, the proposed lighting facilities need not comply with the generally applicable yard area requirements.

### A. The Lawsuit

In June, 1975, twenty-four residents of streets adjacent to or near the Elm Street Field brought a lawsuit against the Board of Selectmen and the School Committee, alleging that certain activities and practices at the Field constituted an unlawful nuisance. Among the

complaints was that the Field's "lights flood some of the plaintiffs' homes with excessive light. . . ." On October 30, 1975, the Town agreed to a final judgment which prohibited new innings or games after 9:30 PM, prohibited weekend games and regulated parking and alcoholic beverages. The Judgment contained no provision regarding lighting.

In July, 1983, the plaintiffs brought a complaint for contempt, alleging a number of supposed violations, including "failing to abate the problem with the artificial lighting. . . ." The plaintiffs and the Town again resolved the matter through negotiation and entered into an Agreement for Judgment dated May 14, 1984. The Agreement included numerous provisions, including two that affect lighting. Paragraph 6 restricted the times during which the Field's lighting system may be turned on. Paragraph 7 contemplated that Acton would "cause a lighting contractor or specialist to study the feasibility and costs of altering the angle or location of the Field's existing lighting system so that the lighting will not directly shine or reflect on any residential property located on Elm Street." The parties were to discuss the alternatives suggested by the lighting specialist and, in the absence of agreement, the plaintiffs retained the right to request a hearing on their original complaint. The Town "expressly reserve[d] its right to assert that the original judgment in this case did not impose any restrictions on Acton with respect to lighting."

The Town's Recreation Department now seeks a special permit from the Planning Board for the placement of two 70' light poles and four 80' tall light poles at the Field pursuant to Acton Zoning Bylaw, § 5.3.5.3.<sup>1</sup> The proposed poles would replace eight 50' light poles, which will be removed. The Outdoor Lighting Education Committee ("OLEC") supports the proposal and has reviewed simulations of the light patterns that the proposal would create. The OLEC reports that those simulations "show good control of light spill at the borders of the playing fields" because of the increased height of the poles and the improved shielding of the proposed light fixtures.

In my opinion, this proposal, as described above, does not violate either the 1975 Judgment or the 1984 Agreement for Judgment. The 1975 Judgment did not address lighting. The 1984 Agreement for Judgment established two requirements regarding lighting: (1) the hours during which lighting is allowed and (2) the employment of a lighting contractor or specialist to study the problem. The pending proposal for lighting at the Field violates neither requirement and, indeed, represents a continuing effort to comply with the second requirement.

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<sup>1</sup> This provision reads:

5.3.5.3 In all Districts, the Planning Board may by special permit increase the height limits in the Table of Standard Dimensional Regulations for light poles that illuminate outdoor recreation facilities such as, but not limited to, playing fields, pools, rinks, tennis courts, driving ranges, ski areas, or skateboard parks that are operated as a Recreation, Municipal, or Commercial Recreation USE. In considering a special permit, the Planning Board shall take into account the trade-offs between the height of light poles and the improved illumination of the facility, and it shall weigh any mitigating effects on light trespass and glare. The luminaries on such light poles shall comply with section 10.6.2.4.c) of this Bylaw. No such light poles shall exceed a height of 85 feet.

The 1984 Agreement thus does not bind the Board to any particular decision on the Special Permit. It is worth noting, however, that based upon the OLEC's assessment, the proposal seeks to accomplish the ultimate goal of the 1984 Agreement, namely the voluntary elimination of light shining directly on abutting properties.

The 1984 Agreement for Judgments also contemplates discussions with the plaintiffs. We understand that only two of the original plaintiffs remain in the vicinity of the Elm Street ball field and that the Town has discussed the matter with them. Those discussions should continue until either an agreement or an impasse is reached regarding the proposed special permit and light replacement project.

#### B. Applicability of Yard Area Requirements

You have also asked whether a light pole must comply with the required R-2 zoning setback of 30 feet appearing in the Table of Dimensional Requirements in Section 5 of the Acton Zoning Bylaw. According to the Recreation Department, the replacement of the Elm Street ball field lights and light poles have been designed and located to maximize light efficiency and minimize energy. The Department's staff is concerned that the project will have to be re-engineered if the poles have to be moved. You also have some subsidiary questions,<sup>2</sup> which need not be answered in light of the answer to the first question.

Front Yards are the distance between the street (Lot Frontage) and the nearest point of any Building or Structure. Acton Zoning Bylaw, § 5.2.4. The Acton Zoning Bylaw defines a "STRUCTURE" as:

- 1.3.17 Structure: A combination of materials assembled to give support or shelter, such as BUILDINGS, towers, masts, sheds, roofed storage areas, mechanical equipment, swimming pools, tennis courts, signs, fences; but not including driveways, walkways and other paved areas, underground storage tanks, septic tanks and septic systems, and accessory facilities associated with the provision of utilities such as drains, wells, transformers and telephone poles.

Light poles and associated lighting facilities meet the definition of "structure", as they "give support" and are "towers." They do not qualify as "accessory facilities associated with the provision of utilities", because outdoor lights do not provide "utilities" and because Section 5.3.1

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<sup>2</sup> You ask whether the Planning Board has authority to allow a setback less than the minimum required setback. Since the lighting facilities need not comply with yard area requirements, the Planning Board does not need to address this issue and, indeed, lacks jurisdiction to approve or deny placement of the lighting facilities within the yard area, since the location itself is by right (assuming that other dimensional requirements are met). You also ask whether placing the new light poles at the same distance from Elm Street as the existing poles would permit the Planning Board to grant a special permit for the new poles. The answer is the same. No special permit is needed for location within the yard area and the Planning Board has no authority to allow or deny that by-right placement.

of the Acton Bylaw uses the term "structure" in a way that incorporates light towers, by including "pedestrian lighting facilities; flagpoles; or similar STRUCTURES."

That same Section 5.3.1, however, exempts certain structures from the need to comply with yard area requirements:

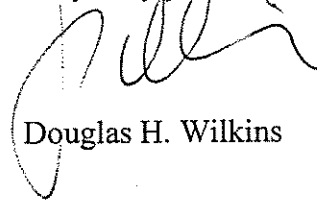
5.3.1 Location of STRUCTURES – Unless otherwise specified in the Bylaw, no STRUCTURE shall be located within the required yard area of any LOT except: walls or fences no more than eight feet in height; uncovered steps, ramps or terraces; sign posts; pedestrian lighting facilities; flagpoles; or similar STRUCTURES.

Lighting facilities for the ball field are arguably "pedestrian lighting facilities", as they light an area used by people on foot. In any event, the proposed ball field lighting facilities for a municipal recreation use<sup>3</sup> are at least "similar structures" when compared to "flagpoles" and "pedestrian lighting facilities". This follows from the plain meaning of this provision's text. It is consistent with the provision's obvious purpose to promote necessary lighting of areas used by the public by allowing effective designs that are not constrained by yard area setbacks. It is also consistent with common practice of placing public light poles, flag poles and the like within yard areas. Indeed, as noted above, the current proposal illustrates the public benefits of the design that this exemption permits.

It follows that the proposed lighting facilities, which will serve a municipal recreational use, need not comply with the required yard areas for the District in which they are located.

Please let me know if you have any additional questions on any of these matters.

Very truly yours,



Douglas H. Wilkins

cc: Kristin Alexander  
Roland Bartl  
Don Johnson  
Stephen D. Anderson, Esq.

<sup>3</sup> Given the limitation of Section 5.3.5.3 to "Recreation, Municipal or Commercial Recreation USE", the result might well be different if a non-municipal recreation use were proposed. Your question does not present this question and therefore this letter cannot be read to apply to such other situations.